IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

OP.No. 18016 of 2000(T)

PETITIONER:

T.N. VINOJ,
S/O. NARAYANAN, AGED 35,
RESIDING AT THANDASSERY HOUSE,
MATHILAKAM, KODUNGALLOOR,
THRISSUR DIST.

BY ADV. SRI.K.C.ELDHO

RESPONDENTS:
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1. **THE DIST. EDUCATIONAL OFFICER, IRINJALAKUDA.**

2. **THE DEPUTY DIRECTOR OF EDUCATION,**
   THRISSUR.

3. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
   THIRUVAANANTHAPURAM.

4. **THE STATE OF KERALA, REP. SECRETARY TO THE**
   GOVT., DEPARTMENT OF GENERAL EDUCATION
   GOVT. SECRETARIAT, THIRUVAANANTHAPURAM.

5. **THE MANAGER, ST. JOSEPH'S HIGH SCHOOL,**
   MATHILAKAM, KODUNGALLOOR, THRISSUR DIST.

6. **SAJU, DRAWING TEACHER,**
   ST. JOSEPH'S HIGH SCHOOL,
   MATHILAKAM, KODUNGALLOOR,
   THRISSUR DIST.

BY ADVW. SRI.BALAKRISHNAN GOPINATH
GOVERNMENT PLEADER SMT. SMITHA SUKUMAR
ADV.SRI.N.RAGHURAJ FOR R5
ADV. SRI. N.N. SUGUNAPALAN FOR R6

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON 30/10/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 29816/2000 IN OP NO 18016/2000 T.

DISMISSED

30/10/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 30/7/94 BY THE R3 DPI.

EXT.P2. COPY OF THE REPRESENTATION DT. 5/09/96.

EXT.P3. COPY OF THE JUDGMENT IN OP NO. 17339/96 DT. 5/11/96.

EXT.P4. COPY OF THE ORDER DT. 13/12/96 BY THE R3.

EXT.P5. COPY OF THE REPRESENTATION DT. 14/2/97 BY THE PETITIONER BEFORE THE R4.

EXT.P5A. COPY OF THE ACKNOWLEDGEMENT CARD.

EXT.P6. COPY OF THE ORDER BY THE R4 DT. 16/2/98.

EXT.P7. COPY OF THE ORDER DT. 11/3/98 APPOINTING THE R6 TO THE POST.

EXT.P8. COPY OF THE JUDGMENT IN OP NO. 14148/98 DT. 24/1/00.

EXT.P9. COPY OF THE ORDER DT. 27/5/2000 BY THE R4.

RESPONDENT'S EXHIBITS

EXT.R5 A. COPY OF THE APPOINTMENT ORDER DT. 3/6/96 OF THE R1.

EXT.R5B. COPY OF THE REVISION PETITION FILED BY THIS RESPONDENT BEFORE THE R4.

EXT.R5C. COPY OF THE LETTER DT. 23/6/97 BY THE R4 TO THE R3.

EXT.R5D. COPY OF THE FORWARDING LETTER DT. 29/3/97 SENT BY R5 TO THE R4.

EXT.R5E. COPY OF THE STATEMENT OF RELINQUISHMENT BY THE PETITIONER DT. 29/3/97.

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EXT.R5F. COPY OF THE STATEMENT SIGNED BY THE PETITIONER DT. 3/6/96.

EXT.R5G. COPY OF THE REPRESENTATION BY THE PETITIONER BEFORE THE R1.

EXT.R5H. COPY OF THE COMMUNICATION DT. 5/09/96 OF THE PETITIONER SENT TO THE R3.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.18016 of 2000-T

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Dated this the 30th day of October, 2007.

JUDGMENT

1. This writ petition is filed seeking to quash the decision contained in Ext.P9, whereby the claim of the petitioner for appointment in terms of Rule 51A of Chapter XIV-A Kerala Education Rules stands rejected. The petitioner also seeks a direction compelling the 1st respondent to approve his appointment in terms of Exts.P1 and P3 and to direct the 5th respondent Manager to appoint the petitioner to the post of Drawing Teacher in the permanent vacancy that arose on 3-6-1996. He also seeks consequential relief of disbursement of salary for the period from 2-1-1995 to 16-3-1995, the term during which the petitioner actually worked and also for further salary from 3-6-1996.

2. According to the petitioner, he was appointed as a Drawing Teacher for the period from 2-1-1995 to 16-3-1995 as against the leave vacancy of one K.I.Joseph, however that he was not paid any salary for that period on the ground that his appointment was not approved. The issue regarding the approval of the appointment of the petitioner was ultimately considered by the 3rd respondent Director of Public Instructions and Ext.P1 order was issued on 30-7-1996 holding that the appointment of the petitioner in the High School section has to be approved and the view taken to the contrary by the statutory authorities is wrong. The DPI, thereby, set aside the subordinate decision holding that the petitioner's appointment was not entitled to be approved on account of the protection that may be available to a specialist teacher in the Upper Primary section. Accordingly, Ext.P1 order was issued directing the District Educational Officer to approve the appointment of the petitioner from 2-1-1995 to 16-3-1995. However, that was not done, in

spite of Ext.P2 representation on 5-9-1996 complaining about the non-compliance of Ext.P1 decision. In the meanwhile, the petitioner apprehended that hasty steps were being taken by the Manager to appoint the 6th respondent without considering the claim of the petitioner. He, therefore, filed O.P.17339/1996, which was disposed of by this Court as per Ext.P3 judgment directing the DEO to consider and pass orders on the representation of the petitioner and also that any appointment of the 6th respondent shall not be approved in case such appointment is in defiance of the claim of the petitioner under Rule 51A of Chapter XIV-A KER. Pursuant to that judgment, Ext.P4 was issued by the DPI after hearing the Manager, the Headmaster, the petitioner and the 6th respondent. The Manager was directed to re-submit the petitioner's appointment orders for the period from 2-1-1995 to 16-3-1995, for approval and the DEO was directed to issue approval order regarding such appointment. The DPI thereby found that

the plea of the Manager that his predecessor had obtained relinquishment from the petitioner is not sustainable and that there was no relinquishment in terms of the statutory rules. In spite of Ext.P4, the grievance of the petitioner remained. He, therefore, made Ext.P5 representation in February, 1997. He, thereafter, moved this Court by filing O.P.14184/1998. When that matter came up for consideration, Ext.P6 order dated 16-2-1998 was placed before this Court, whereby the Government directed that the appointment of the 6th respondent with effect from 3-6-1996 be approved. That decision of the Government was taken by acting on a document characterized as a statement of relinquishment issued by the petitioner with effect from 3-6-1996. It has to be immediately noticed that the petitioner was not heard in relation to Ext.P6 order. Ext.P6 was issued apparently on the basis of an order of appointment dated 11-3-1998 (Ext.P7) whereby the 6th respondent was appointed with effect from 3-6-1996. O.P.14184/1998 was allowed to be amended and

disposed of finally on 24-1-2000 quashing the Government Order (Ext.P6) and Ext.P7 order of the appointment of the 6th respondent. The parties were relegated to the Government for being heard. Pursuant to that, Ext.P9, the order impugned in this writ petition, has been passed by the Government whereby the claim of the petitioner for appointment as against the vacancy that arose on 3-6-1996 was rejected. It is in the aforesaid circumstances that this writ petition is filed.

3. The 5th respondent Manager has filed a counter affidavit. According to him, he challenged Ext.P4 decision dated 13-12-1996 by filing Ext.R5(b) revision dated 20th January, 1997 and Ext.R5(c) was issued by the Government to the DPI to forward the statement of relinquishment of the petitioner also requesting to report specifically whether such relinquishment or forfeiture of claims under Rule 51A Chapter XIV-A KER conforms to the Rules and could be accepted. The 5th respondent states that he had earlier

forwarded the relinquishment letter of the petitioner to the DPI with the counter signature of the then Headmaster and that it was as per Ext.R5(d) that the relinquishment of the petitioner was forwarded by the Manager to the Government. It is stated that Ext.R5(e) under the caption “Statement of Relinquishment” signed by the petitioner was then made available and the Government acted on the same. It is also stated that on the date of execution of Ext.R5(e), the petitioner also executed Ext.R5(f) as an Appendix to the Statement of Relinquishment. The petitioner is also accused of having made Ext.R5(g) representation belatedly feigning ignorance of the proceedings which are taken place in between. The 5th respondent has also produced Ext.R5(h) by which the petitioner is shown to have complained to the DPI about certain blank papers being signed and obtained by the 5th respondent Manager from the petitioner.

4. On the basis of the aforesaid competing claims, it can be seen that the petitioner's appointment as a Drawing Teacher in the leave vacancy of Sri.K.I.Joseph from 2-1-1995 to 16-3-1995 is not disputed. If that be so, there is no rhyme or reason for the statutory authorities to refuse approval of such appointment. On such action, the approval shall be effective from the date of appointment. This means that when a regular vacancy arose on 3-6-1996, the date from which the 6th respondent was appointed, the petitioner was an available candidate with the preferential right under Rule 51A Chapter XIV-A KER and the appointment of the 6th respondent with effect from 3-6-1996 could not have been made. That vacancy arose on 31-3-1996 with the retirement of Sri.K.I.Joseph.

5. The finding of the Government in the impugned Ext.P9 is that the appointment of the petitioner with effect from 2-1-1995 to 16-3-1995 was not approved by the DEO and that the petition filed by the writ petitioner in that regard

was disposed of by the DPI only on 30-7-1996. That is Ext.P1 order. When the DPI issued Ext.P1 order overruling the objections of the DEO and by directing the DEO to approve the appointment of the petitioner with effect from 2-1-1995 to 16-3-1995, it was the bounden duty of the statutory authorities to give effect to that decision, which means that the petitioner's appointment from 2-1-1995 to 16-3-1995 is liable to be approved and formal orders have to be issued. Ext.P1 had become final. The Government could not, therefore, conclude that the effect of Ext.P4 decision of the DPI would be only as if the approval for the appointment of the petitioner from 2-1-1995 to 16-3-1995 would come to be effective only after the occurrence of vacancy by the retirement of Sri.K.I.Joseph on 3-6-1996.

6. It has also to be specifically noted that by entering on an adjudication on the basis of Ext.R5(b) revision, the claim of the petitioner for approval of appointment from 2-1-

1995 to 16-3-1995 is not liable to be re-opened. That issue stands concluded by Ext.P1 order. In Ext.P3 judgment, this Court had specifically taken note of the possibility of the entitlement of the petitioner to preference over the 6th respondent in terms of Rule 51A Chapter XIV-A KER. Not only that, once the DPI had concluded in Ext.P1 dated 30-7-1996 that the petitioner was entitled to have his appointment from 2-1-1995 to 16-3-1995 approved in accordance with the KER, that cannot be re-opened by the DEO, who was the 3rd respondent in Ext.P3 writ petition and who stood directed thereby to act on Ext.P5 representation of the petitioner in which he had complained that Ext.P1 order was not given effect to. It would be a situation of inexcusable virtually insubordination by the DEO, to upset the DPI's decision contained in Ext.P1. If that be so, Ext.P1 decision shall run with its full rigour and the statutory authorities are bound to issue formal orders approving the appointment of the petitioner from 2-1-1995 to 16-3-1995. This means

that as on the date of occurrence of the vacancy by the retirement of Sri.K.I,Joseph on 31-3-1996, the petitioner was the only available candidate for appointment as against that vacancy with preferential claim in terms of Rule 51A Chapter XIV-A KER.

7. The aforesaid legal effect was attempted to be got over only by relying on the documents which are now held out as relinquishment of rights by the petitioner.

8. Ext.R5(a) (Ext.P7) appointment of the 6th respondent is made by the 5th respondent Manager on 3-6-1996 against the retirement vacancy of Sri.K.I.Joseph who demitted office on 31-3-1996. Ext.R5(e) statement of relinquishment is dated 29-3-1997, even after 20-1-1997, the date of Ext.R5(b) revision of the Manager against Ext.P4 decision of the DPI rendered on 13-12-1996. Ext.R5(e) is about certain relinquishments in relation to K.S. & S.S.R. In paragraph 2 of his counter affidavit, the

5th respondent states (see page 3 of the original) that on the same day of issuance of Ext.R5(e), i.e. on 29-3-1997, the petitioner issued a relinquishment letter permanently relinquishing with effect from 3-6-1996 his rights under Rule 51A in order to facilitate the regularization of the 6th respondent's appointment. I read that sentence in the context of the fact that Ext.R5(f) does not state any date. If Ext.R5(f) issued on 29-3-1997, as contended by the Manager, is to be taken, the petitioner should be deemed to have exercised a relinquishment even after the DPI had come to his rescue by issuing Ext.P4 order. I am not impressed to swallow that contention on the face of the fact that even thereafter, the petitioner had been vigorously litigating for establishment of his right which would entitle him to appointment as a teacher, which essentially gives him not only an appointment in a school which may bring him social status but also livelihood under Article 21 of the Constitution. Am I to assume that after executing Exts.R5(e) and R5(f) on 29-3-1997 as

contended by the 5th respondent Manager, the petitioner was entertaining himself by filing O.P.14184/1998 leading to the quashing of Ext.P7 order of appointment of the 6th respondent and Ext.P6 Government Order which was passed without hearing him? Am I to assume that the petitioner would have issued Exts.R5(e) and R5(f) relinquishment letters when Ext.P5 was addressed by him to the State Government voicing his grievances? Definitely, not. In that context, I am inclined to believe the version in the third paragraph of Ext.R5(h) in which the petitioner states that the 5th respondent Manager asked him to sign a paper, the contents of which were not let known to him. When he made that complaint on 5-9-1996 [Ext.R5(h)], by that document, which is placed on record by the 5th respondent, he was aware of his statutory rights flowing out of Rule 51A Chapter XIVA KER, as discernible from the 4th paragraph of that representation.

9. The law is fairly well settled by the decisions of this Court that the statutory rules under Rule 51A Chapter XIVA KER are not to be lightly taken, as relinquished and such relinquishments ought to be considered strictly. (See the decisions of this Court in **Poornima v. Director of Public Instructions** [2005 (3) KLT 502] and **Nalini v. State of Kerala** [2001(2) KLT 273] **Shobhana v. Manager, Cholapurath A.U.P.School** [1997(2) KLT SN 74 Case No.74].

10. For the aforesaid reasons, the following conclusions are inescapable:

(a) The petitioner's appointment as Drawing Teacher from 2-1-1995 to 16-3-1995 was entitled to be approved.

(b) As on 30-7-1996, the DEO stood compelled by Ext.P1 order of the DPI to issue formal approval

orders regarding the appointment of the petitioner from 2-1-1995 to 16-3-1995. The refusal of the DEO to do so is contrary to law.

(c)The aforesaid means that the approval of the appointment of the petitioner from 2-1-1995 to 16-3-1995 has become final; is beyond challenge and the DEO is duty bound under Ext.P1 order and the relevant provisions of KER to issue formal orders which will relate to the period from 2-1-1995 to 16-3-1995.

(d)Following the aforesaid, the petitioner was the only available candidate for preferential appointment in terms of Rule 51A Chapter XIVA KER as against the vacancy of Drawing Teacher that arose in the school of the 5th respondent by the retirement of Sri.K.I.Joseph on 31-3-1996 and the petitioner was entitled to be so appointed, at least,

from 3-6-1996, the date on which the 6th respondent was so appointed.

(e)The appointment of the 6th respondent as per Ext.P7 (which was Ext.P6 in Ext.P8 judgment) was quashed by this Court as per Ext.P8 judgment and did not, therefore, survive for even treating the 6th respondent to have been in service of the school of which the 5th respondent is the Manager.

(f)The denial of appointment to the petitioner to the post of Drawing Teacher as against the vacancy of Sri.K.I.Joseph, at least, with effect from 3-6-1996 is arbitrary, irrational, illegal and unconstitutional. It is unjust and has resulted in manifest miscarriage of justice on the face of Ext.P1 order and the judgments rendered by this Court inter partis.

For the foregoing reasons, this writ petition is allowed in

the following terms:

i. Following Ext.P1, DEO shall, forthwith, issue approval orders regarding the petitioner's term of appointment from 2-1-1995 to 16-3-1995 covered by Ext.P1 order.

ii. Ext.P9 is quashed. It is declared that the petitioner is entitled to be appointed as Drawing Teacher in the St. Joseph's High School, Mathilakam, at least, with effect from 3-6-1996 as against the vacancy owing to the retirement of Sri.K.I.Joseph.

iii. The 5th respondent Manager is directed to issue appointment order in terms of the aforesaid declaration.

iv. Formal approval orders shall be issued as regards the aforesaid appointment, in terms of this

judgment.

v. The petitioner shall be entitled to all monetary benefits on account of the aforesaid appointment. That shall be quantified and released to the petitioner within an outer limit of three months from now.

vi. This judgment does not preclude the Government from taking appropriate action against the Manager or the DEO, who failed to give effect to Ext.P1 order leading to the situation in which the petitioner has been gravely jeopardized, as found in this judgment.

vii. Though I am inclined to impose a very heavy order of costs against the 5th respondent Manager and also the DEO, who failed to obey the directions of the DPI as are contained in Ext.P1 order, I refrain

from doing so, having regard to the fact that the petitioner on the strength of this judgment would become gainfully employed in the school of the 5th respondent.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.18016 of 2000-T

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JUDGMENT

Dated: 30th October, 2007.